

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(25)
4/2/01
vff

JOHN RICHARD JAE
Plaintiff,

vs.

WEXFORD HEALTH SERVICES, INC.,
Defendant.

ORIGINAL CIVIL NO. 1:00-CV-00155

U.S. DISTRICT JUDGE RAM
MAGISTRATE JUDGE SMYER

REPLY BRIEF IN OPPOSITION
DEFENDANT'S MOTION TO
DEVOKE PLAINTIFF'S INFER
PAUPER'S STATUS

FILED BY: MR. JOHN RICHARD JAE
Plaintiff and Sec

FILED
HARRISBURG, PA

MAR 30 2001

MARY E. DIANDREA, CLERK
Per AK Deputy Clerk

MR. JOHN RICHARD JAE,
#BQ-3219
SCF Greene/SMV
175 Progress Drive
Waynesburg, PA 15370-8089

STATEMENT OF THE CASE

On or About August 28, 2000, John Richard Jare, a Prisoner confined in the Restricted Housing Unit at the State Correctional Institution At Camp Hill (SCIZ-Camp Hill) Camp, Pennsylvania, initiated this Civil Rights Action by filing a complaint pursuant to 42 U.S.C. § 1983 against Defendant, Wexford Health Services, Inc., a result of the deliberate indifference to Plaintiff's serious medical condition resulting from the Defendant's failure to repair/replace the Plaintiff's Prescription Eyeglasses which had been broken back in December, April, 2000. Plaintiff's complaint sought, as relief, compensatory and punitive Damages, a Declaratory Judgment, Plaintiff's Court Filing Fees, U.S. Marshal Service Fees, Plaintiff's Attorney's Fees & Costs (if any), a trial By Jury and such other and Further Relief as this Court deems is just, proper & equitable, Herein, and Plaintiff also filed Application, seeking leave of Court to proceed in forma pauperis.

In his Application for Leave to Proceed In Forma Pauperis, Plaintiff alleged that he was under imminent danger of serious physical harm.

"Because of the strain and wear and tear on and the deteriorating of my eye vision/eyes, which is shown by the blurred vision, headache, eye pain I am experiencing now and have experienced for the past several months here and what could amount to irreversible damage on my eyes/vision is the direct result of defendant's illegal refusal to have my eye glasses repaired and I could go blind from such." //

By order, dated September 8, 2000, this Court granted Plaintiff's Application to proceed in forma pauperis, herein this case.

On or About November 13, 2000, Defendant, by Counsel, filed a Motion to Revoke Plaintiff's In Forma Pauperis Status, herein this case. On November 28, 2000, Defendant, by Counsel, filed their Brief in Support of their Motion. On or About January 1, 2001, the Court granted an extension of time until January 1, 2001, for Plaintiff to file their Brief in Opposition to Defendant's Motion.

to file a brief in opposition to Defendants' Motion To Revoke Plaintiff's In Forma Pauperis Status and a Brief In Opposition To Defendants' Motion To Dismiss Plaintiff's Complaint.

On ^{or about} January 25, 2001, Plaintiff filed his second Motion For Enlargement of Time, herein this case, requesting a second enlargement of time until March 25, 2001, in which to file a Reply brief in opposition to the above-referred to Defendant Motions, which U.S. Magistrate Judge J. Andrew Smyser, of the Court, denied on February 2, 2001.

Plaintiff, on or about February 11, 2001, Plaintiff appealed to U.S. District Judge from the illegal February 2, 2001, Order of U.S. Magistrate Judge, denying, Plaintiff's Second Motion For Enlargement of Time, and on February 26, 2001, U.S. District Judge Rambaugh, entered an Order, reversing the Magistrate Judge's Order of February 2, 2001, and granting Plaintiff leave until March 25, 2001, to file Opposition Briefs and, ordering, that no further extensions will be granted under any circumstances, that the order of the Magistrate Judge dated February 12, 2001, is vacated ^{and} pending the filing by Plaintiff of his opposition brief and further consideration by the Magistrate Judge, the Magistrate Judge shall reinstate his order of February 12, 2001, if Plaintiff fails to file a timely brief, and the captioned action is referred to Magistrate Judge Smyser.

This is the Plaintiff's Reply Brief In Opposition To Defendant's Motion To Revoke Plaintiff's In Forma Pauperis Status, herein this case.

II. STATEMENT OF THE FACTS

Sometime around the end of April, 2000, Plaintiff John Richard [redacted] who has worn eyeglasses since he was 2 months old, broke his pair of eyeglasses here.

Around the first or second week of May, 2000, Plaintiff gave turned his broken eyeglasses into the Prison Corrections Health Care Administrator, Ms. [redacted] on or about the U.S. Magistrate Judge's of February 2, 2001.

along with an inmate request to Staff Member Form, requesting she send such Eyeglasses out to be repaired.

On June 4, 2000, Plaintiff Jae wrote & sent an Inmate Request to Ms. Law, advising her that I had not yet received my eyeglasses back here yet, that I was being temporarily transferred to the SAU at SCI-Waymart for a mental health evaluation, on July 6, 2000, would she please check & see why my glasses had not been returned to me & then when they get here, to please send such me at SCI-Waymart.

On June 6, 2000, Plaintiff Jae was transferred to the SAU at -Waymart.

On June 19, 2000, Plaintiff was temporarily returned back to -Camp Hill from the SAU at SCI-Waymart for a Federal court hearing.

That on June 22, 2000, because he still had not received his eyeglasses back yet, he again wrote and sent another Inmate Request Form to Law and one to Defendant Wexford Health Services, Inc., he complained about such.

On June 23, 2000, Plaintiff Jae was returned to the SAU at SCI-Waymart.

On July 18, 2000, Plaintiff Jae was permanently transferred back to Camp Hill from the SAU at Waymart.

On July 20, 2000, Plaintiff Jae was seen at Sick Call here by Colleen Newfield and one of the medical problems he complained about was the blurred vision, headaches & eye pain that he was experiencing from not having his eyeglasses to wear.

On or about July 27, 2000, Plaintiff Jae was again seen here at Sick Call by P.A. Todd (last name not known) & one of the medical problems he complained about was the blurred vision, headaches and eye pain experiencing from not having his eyeglasses to wear.

On or about August 2, 2000, Plaintiff Jae was again seen here at Sick Call by [illegible] & one of the medical problems he complained about was the blurred vision, headaches & eye pain experiencing from not having his eyeglasses to wear.

That, on August 16, 2000, Plaintiff Jue was again seen at St. Vincent by Chief P.A. Colleen Newfield and that one of the medical conditions/problems he complained about was the headaches, blurred vision & eye pain which he was experiencing due to not having his eyeglasses to wear.

On August 16, 2000, Chief P.A. Newfield verbally informed Plaintiff that she had investigated the matter of his eyeglasses & was informed that Defendant Wexford Health Services, Inc., had refused to send the Plaintiff's eyeglasses out to be repaired, unless the Plaintiff could pay for such as there was written documentation on Plaintiff's medical chart that during the year's, Plaintiff has received seven (7) pairs of replacement eyeglasses.

That, Plaintiff Jue has not received seven (7) pairs of replacement eyeglasses within the past 18 months/1 1/2 years, but only two pairs and one of these was ordered by the eye doctor here due to a change in Plaintiff Jue's eye prescription & thus such is a blatant & bold face lie & if such is documented in the medical chart here, then some Nurse or Medical Personnel deliberately & fraudulently placed/wrote such information lie on my Prison medical chart falsely and such is suspect and suspicious.

From July 22, 2000, through August 15, 2000, Plaintiff Jue also complained on numerous occasions to numerous different nurses the headaches, blurred vision & eye pain which he was experiencing & not having his eyeglasses to wear.

That, this is not the first time that Defendant Wexford Health Services, Inc. has refused to have Plaintiff Jue's eyeglasses repaired because of no money on his Prison Account to pay for such repairs as the Defendant has not paid for over four months here & Defendant Wexford Health Services, Inc., issued herein for refusing to have Plaintiff's eyeglasses repaired for over four months back then last year here also.

That, the Prison & its Health Care Contractor are legally obligated to pay for medical care & treatment for its prisoners, including, but not limited to, eyeglasses.

It is so. 1st # 3 - V. 70 of the Pr. Dept. 2

III. ARGUMENT

- A. PLAINTIFFS IN FORMA PAUPERIS STATUS SHOULD NOT BE REVOKED BECAUSE MORE THAN MORE THAN THREE OF HIS COMPLAINTS HAVE BEEN DEEMED FRIVOLUS, MALICIOUS OR AILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Defendant relies upon and cites a case from the United States Court of Appeals for the Eighth Circuit, in which it was stated:

"The Act does not close the Courthouse doors to prisoners who frequently file frivolous lawsuits; rather, it merely makes them pay the full ordinary filing fees sooner rather than later." Ashley v. Dilworth, 147 F.3d 715 (8th Cir. 1998). 57

By reply to such, the Plaintiff avers & submits that, how the Court was wrong in Ashley, as, if a pro se Plaintiff has money at all in which to pay the full ordinary filing fee up all at once, then the Act most certainly does close the Courthouse doors to indigent pro se plaintiffs - prisoners. It makes them pay the full ordinary filing fees sooner or up all at once rather than later, because such causes the Courts to dismiss the pro se prisoner Plaintiff's claims and deny him access to the Federal Courts when he is unable to pay such filing fee up front all at once & when it causes the courts to violate their sworn duty to hear federal claims. Ayers v. Norris, 43 F. Supp.2d 1039 (E.D. Ark. 1999).

Next Defendant claims and argues, that:

In this case, Plaintiff is a frequent-filer of frivolous claims.

However, by reply to such, the Plaintiff avers & submits to the he is not a frequent-filer of frivolous claims, but rather, he is a rights-law violating court system which has violated his rights to follow up hold the Court in Federal Law in his previous

~~Defendant also claims that:~~
~~Plaintiff's ca~~

B. PLAINTIFF WAS UNDER IMMEDIATE DANGER OF SERIOUS PHYSICAL INJURY BOTH AT THE TIME OF THE INCIDENT GIVING RISE TO HIS COMPLAINT AND AT THE TIME OF THE FILING OF THE COMPLAINT IN THIS CASE AND THUS, HE "DOES" MEET EXCEPTION TO THE THREE STRIKES PROVISION.

In Gibbs v. Roman, 116 F.3d 83 (3d Cir. 1997), our Third Circuit, U.S. Court of Appeals, stated & held =

In resolving a contested issue of imminent danger, the district court may rely upon evidence supported by sworn affidavits and depositions, or alternately may hold a hearing. (Gibbs, 116 F.3d at 87).

However, here in this instant case, the defendant has not a evidence by neither sworn nor unsworn affidavits or depositions, thus, it "has" violated the above-holding of the Third Circuit in Gibbs, and, as a consequence, this court may not, by consider Defendant's Exhibit A nor Exhibit B in its Dec. In support of Motion to Revoke Plaintiff's Inmate Rights Status, hear.

Also, in Gibbs v. Roman, 116 F.3d 83 (3d Cir. 1997), our Third Circuit of Appeals, stated & held =

We emphasize that the proper focus when examining an inmate's complaint filed pursuant to 28 U.S.C. § 1515(b) must be the imminent danger faced by the inmate at the time of the alleged incident and not at the time the complaint was filed. (Gibbs, 116 F.3d at 86-87).

Gibbs v. Roman was the controlling/stated of the law at time of incident alleged in the Complaint and also at the time of the filing of the Complaint, herein this case, & thus, it is under the Third Circuit's Gibbs holding(s), as above is, this court must examine & decide the present issue of the

Defendant ^{also} claims, that,

Plaintiff's complaint does not allege any facts establishing that he is in imminent danger of serious physical harm.

By reply to this, the Plaintiff avers & submits, that, it is true, by law it is not the Plaintiff's complaint which alleges any facts establishing that he is in imminent danger of serious physical injury/harm, but rather, it is Plaintiff's Application For Leave To Proceed In Forma Pauperis which alleges such facts establishing that he is under imminent danger of serious physical injury/harm & herein this instant Plaintiff's Application For Leave To Proceed In Forma Pauperis "does" allege facts establishing that he was in imminent danger of serious physical injury both at the time of the injury alleged in the complaint and also at the time the complaint was filed and thus, Defendant's claim here is not only factually frivolous & untrue, but such is also contrary to the contrary. Defendant also claims & argues, that:

In this case, Plaintiff's complaint arises out of the fact that the inmate's prescription lenses were not replaced. It strains credibility to suggest that the failure to replace Plaintiff's eyeglasses placed him in imminent danger of serious physical harm. Consequently, the Honorable Court must revoke Plaintiff's in forma pauperis status as a matter of law.

However, by reply to this the Plaintiff avers & submits Defendant fails to allege & state how it strains credibility to suggest that the failure to replace Plaintiff's eyeglasses placed Plaintiff in imminent danger of serious physical harm. Plaintiff alleges as the reason why Plaintiff was under imminent danger of serious physical injury, herein this case, which Defendant,

Furthermore, Plaintiff favors & submits that the Defendant's claim/argument here is also factually & legally insufficient, specious & frivolous because the U.S. Court of Appeals for the Third Circuit, stated & held, in Gibbs v. CRS, 160 F.3d 962 (3d Cir. 1998), that,

Inmates ought to be able to complain about "unsafe, life-threatening condition [s] in their prison" without waiting for something to happen to them. (Gibbs, 160 F.3d at 965),

* * * * *

Thus, we will not read the language of § 1915(g) to require that the "imminent danger" allegation be accompanied by allegations of an existing serious physical injury in order to bring a prisoner within the statutory exception to the "three strikes" provision. It is sufficient that the condition poses an imminent danger of serious physical injury. (Gibbs, 160 F.3d at 967),

and herein this instant civil rights action, this Plaintiff should not have to wait until he suffers so much strain and damage ^{to his eyes} from having to go without his eyeglasses which becomes irreversible and he loses his vision as a result before he can file a lawsuit/civil complaint against the Defendant, for illegally denying him his eyeglasses/eye care, and notably absent from Defendant's ^{is any citations of authorities supporting its argument here that's because there are} Finally, it is anything in this case which stains credibility, as it violates the law, & is Defendant's claim & arguments of their motion/Brake Plaintiff's In Forman before this and Brief in Support herein.

(w) HEREOFRE, PLAINTIFF John Richard Jagg, Pr,
 that this Court will follow & enforce the controlling
 Federal Law as it "is" required to do and enter an
 Order denying, with prejudice, Defendant's Motion to
 Revoke Plaintiff's In Forma Pauperis Status, herein this case.

AND HE SHALL EVER BE
 RESPECTFULLY SUBMITTED

(s) ~~John Richard Jagg~~
 MR. JOHN RICHARD JAGG
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 SGT-GREENE/SMU
 175 Progress Drive
 Waynesburg, PA. 15370
 Plaintiff and Pro Se Counsel

Dated: 23rd MARCH 2001

Jae vs. Wexford Health Services, Inc.
CIVIL No. 1: CV-00-1534
CERTIFICATE OF SERVICE

I certify that on: 3/23/01, I mailed to the person/s below, a true & correct carbon copy of each of the Plaintiff's Reply Brief In Opposition To Defendant's Motion To Revoke Plaintiff's In Forma Pauperis Status and Reply Brief In Opposition To Defendant's Motion To Dismiss Plaintiff's Complaint, by U.S. 1st Class Mail, Postage Prepaid:

I certify that on: 3/23/01, I gave to prison officials here, originals of each of the above named documents for mailing to this

I certify under penalty of perjury & pursuant to 28 U.S.C. § 1746 that above, is true & correct:

MR. James D. Young, Esquire
LAVERY, FAHERTY, YOUNG & PATTERSON, P.C.
Attorneys At Law
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Harrisburg, PA 17108-1245

Dated/Executed On:
23rd MARCH 2001:

(s) John Richard
MR. JOHN RICHARD
Plaintiff and PR Sec C